



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Joseph R. Byrum *et al.*

Appln. No.: 09/669,817

Filed: September 26, 2000

For: Nucleic Acid Molecules and Other
Molecules Associated with Plants

Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

Atty. Docket: 38-21(51469)B

**REQUEST FOR WITHDRAWAL OF HOLDING OF ABANDONMENT –
NO ABANDONMENT IN FACT (or in the alternative, Petition to Revive
Unintentionally Abandoned Application)**

Commissioner for Patents
Washington, DC 20231

Sir:

In accordance with M.P.E.P. §711.03, withdrawal of the holding of abandonment in the above-captioned application is respectfully requested, there being no abandonment in fact.

On January 8, 2001, a Notice to Comply was mailed to Applicants' representative at Monsanto Company. The due date for responding to the Notice to Comply was March 8, 2001. On February 15, 2001, Applicants' representative filed a responsive submission to the Notice to Comply ("Applicants' Response") which included a Response to the Notice to Comply, accompanied by a copy of the Notice, a copy of the original application Transmittal, a copy of a Petition to Suspend Sequence Rules originally filed on September 26, 2000, a substitute compact disc, and a Statement Regarding Sequence Submission, each accompanied by Certificates of Mailing certifying that the documents were deposited with the U.S. Postal Service as First Class Mail on February 15, 2001. A copy of Applicants' Response (except for the compact disc) is attached hereto as Exhibit A.

A copy of a date-stamped postcard indicating receipt of Applicants' Response on February 20, 2001 by the United States Patent and Trademark Office/Office of Initial Patent Examination is attached hereto as Exhibit B.

On October 9, 2001, a Corrected Decision on Petition was mailed to Applicants' representative at Monsanto Company. The Corrected Decision granted Applicants' earlier

petition to waive the requirements of the sequence rules as they existed at that time, and requested that Applicants submit additional copies of the sequence listing on compact disc. On December 7, 2001, Applicants' representative at Arnold & Porter filed a responsive submission to the Corrected Decision on Petition, a copy of which is attached hereto as Exhibit C. A copy of a date-stamped postcard indicating receipt of this responsive submission, including replacement copies of the sequence listing on compact disc, by the United States Patent and Trademark Office/Office of Initial Patent Examination is attached hereto as Exhibit D.

On September 9, 2002, a Notice of Abandonment (Exhibit E) was mailed to Applicants' representative at Monsanto Company, alleging that the above-identified application "is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on January 8, 2001." No such Notice was received. The Notice mailed January 8, 2001 that was received by Applicants' representative at Monsanto Company was not a Notice to File Missing Parts, but rather a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosure. Furthermore, the application met the statutory requirements of 35 U.S.C. § 111 when it was filed on September 26, 2000 because it contained a specification, the signed oaths of the inventors, and the required filing fees (*see* Transmittal in Exhibit A). Therefore, no Notice to File Missing Parts would have been expected to be mailed because nothing required by statute was missing from the application as filed. Accordingly, it is the belief of Applicants' representative that the Notice of Abandonment contains a typographical error with respect to the title of the Notice, and that no Notice to File Missing Parts was ever mailed by the United States Patent and Trademark Office.

With respect to the Notice to Comply mailed January 8, 2001, Applicants submitted a timely and proper reply, which was received by the United States Patent and Trademark Office on February 20, 2001 (*see* Exhibit B). Therefore, the above-identified application is not abandoned in fact.

This Request for Withdrawal of Holding of Abandonment is being filed within two (2) months of the mailing of the Notice of Abandonment. In light of the above, withdrawal of the holding of abandonment is respectfully requested. No fee is believed to be due for this Request.

If it is found that Applicants have not met the requirements set out in MPEP §711.03(c), Applicants hereby petition for revival of the above-identified application under 37 C.F.R. §1.137(b), which allows for revival of an abandoned application if the delay in responding to an Office Action is unintentional. A copy of the required reply has been filed previously, and is attached hereto as Exhibit A. Also enclosed is a copy of a replacement compact disk, and a Statement Regarding Sequence Submission. In such event, the Commissioner is authorized to charge \$1280.00, to cover the petition fee set forth in 37 C.F.R. §1.17(m), to Deposit Account No. 50-2387, referencing 16517.001/51469B. A duplicate copy of this petition is enclosed. In light of the above, the entire delay in filing the required reply from the due date for the reply (*i.e.* March 8, 2001) until the filing of this petition was unintentional. Applicants hereby petition for revival of the above-identified application.

If any additional charges are deemed appropriate, Applicants hereby authorize the U.S. Patent and Trademark Office to charge any fee to our Deposit Account No. 50-2387 referencing 16517.001/51469B.

Respectfully submitted,

Lawrence M. Lavin, Jr.

by June E. Cohan

Lawrence M. Lavin, Jr. (Reg. No. 30,768)
by June E. Cohan (Reg. No. 43,741)

Date: October 9, 2002

Patent Department, E2NA
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Tel: 314-694-3602
Fax: 314-694-1671